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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/667,693	09/22/2000	James H. Johnson	032028-0311096	1007

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EXAMINER

HELLNER, MARK

ART UNIT	PAPER NUMBER
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3663

MAIL DATE	DELIVERY MODE
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08/21/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/667,693

Applicant(s)

JOHNSON ET AL.

Examiner

Mark Hellner

Art Unit

3663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7, 9, 10 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Elmer et al (4,247,768).

Elmer et al disclose a device for determining the velocity of vehicles traversing a roadway, the device comprising: a first radiation source (10 of station 1) producing a first beam and arranged at one side of the roadway; a first detector (11 of station 1) arranged at an opposite side of the roadway to receive the first beam from the first radiation source for producing an output signal indicating a presence or absence of the first beam; a second radiation source (10 of station 2) producing a second beam and arranged at one side of the roadway and spaced a predetermined distance (column 2, line 43) from the first radiation source; a second detector (11 of station 2) arranged at an opposite side of the roadway to receive the second beam from the second source for producing a signal indicating the presence or absence of the second beam; means (figure 4) indicating the interruptions of the first and second beams by the front and rear wheels of the vehicle; and analyzing means (figure 3) for calculating the speed and acceleration of the motor vehicle (speed is the scalar value of velocity and acceleration is the derivative of velocity).

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The structure recited above reads on claim 1.

Claims 7, 9, 10 and 18 read on the structure applied to claim 1.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4-6, 9, 11, 13-17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elmer et al.

Claims 2, 9 and 11 recite components that would have been suggested by elements 12 and 13.

Seventy inches (claim 4) would have been an obvious dimensional variation suggested by the two feet disclosed.

Claims 5 and 14-16 recite notoriously well known properties of IR light sources.

Claim 6 recites notoriously well known detector structure.

The principle of operation of the device of Elmer et al apply to visible light (claim 13).

The road shape to which the device of Elmer et al would have been applied would have determined to position of the emitters and detectors with respect to the vehicle, thus rendering claim 17 obvious.

The subject matter of claims 19 and 20 would have been logically inferred from figure 4.

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Claims 3, 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elmer et al in view of Bishop et al (5,210,702).

Bishop et al is cited to show that it was known at the time of the present application to use remote sensing to measure vehicle emissions. It would have been obvious for a state government to have combined the devices of Elmer et al and Bishop et al at one station in order to reduce cost.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references cited show the level of skill in the art.

Any inquiry concerning this communication should be directed to Mark Hellner at telephone number 571 272 6981.



Mark Hellner

Primary Examiner

AU 3663